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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG817

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys along the Oregon and California Coasts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization Renewal.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) Renewal to the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California Santa Cruz (UCSC) to harass marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California Coasts.

DATES: This IHA Renewal is valid from April 12, 2019 through April 11, 2020.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms

such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal IHA under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year IHA Renewal when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA. All of the following conditions must be met in order to issue a Renewal:

- A request for Renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for Renewal must include the following:
 - (1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and
 - (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the initial findings remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.

History of Request

On March 8, 2018, NMFS issued an IHA to PISCO to take marine mammals incidental to rocky intertidal monitoring surveys at multiple locations on the coasts of Oregon and California (83 FR 11696; March 16, 2018), effective from March 12, 2018 through March 11, 2019. This multiyear annual survey involves surveying rocky intertidal zones at a number of coastal locations. On January 8, 2019, NMFS received an application for a Renewal of the initial IHA. As described in the application for Renewal, the activities for which incidental take has been requested are nearly identical to those covered in the initial IHA. As required, the applicant also provided a preliminary monitoring report (available at *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>*) which confirms that the applicant has

implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized occurred as a result of the activities conducted. Notice of the proposed IHA Renewal was published in the **Federal Register** on March 7, 2019 (84 FR 8316).

Description of the Specified Activities and Anticipated Impacts

PISCO plans to continue rocky intertidal monitoring work that has been ongoing for 20 years. PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. The program integrates long-term monitoring of ecological and oceanographic processes at 154 separate sites with experimental work in the lab and field. Research is conducted throughout the year along the Oregon and California coasts and will continue as long as funding is available. The research being conducted under the Renewal IHA will be nearly identical to that analyzed under the initial IHA. Since the issuance of the initial IHA a new site that had never been surveyed previously (Waddell) was added to the site inventory as part of a study examining ecosystem level effects of sea star wasting syndrome (SSWS). There are six additional biodiversity sites (*i.e.*, Ecola, Roads End, Otter Rock, Seal Rock, Graduation Point and North Head) that were not visited or analyzed as part of the initial IHA. Researchers accessing and conducting research activities on the sites may occasionally cause behavioral disturbance (*i.e.*, Level B harassment) of three pinniped species at 16 of the sites (described in PISCO's application for the 2018 IHA). PISCO's request is for the following instances of take: 90 California sea lion takes (*Zalophus californianus*), 255 harbor seal takes (*Phoca vitulina richardii*), and 50 northern elephant seal takes (*Mirounga angustirostris*). These are the same levels of take that were authorized under

the initial IHA. PISCO expects that the disturbance to pinnipeds from the research activities will be minimal and will be limited to Level B harassment, as described in the documents associated with the initial IHA.

Description of the Activity and Specific Geographic Region

A detailed description of the planned intertidal monitoring project was provided in the **Federal Register** Notices of the Proposed IHA (83 FR 3308; January 24, 2018) and Final IHA (83 FR 11696; March 16, 2018) for the initial IHA, along with the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8316; March 7, 2019). Overall, the specified geographic region, the amount of activity, and the nature of the activities are identical to those described in previous notices. The frequency of visits and total visits to a particular site may vary across years, and within an annual plan once submitted, but the description of the action and the marine mammal analysis included in the 2018 IHA were designed to capture such variations. As noted above, 154 sites are visited and surveyed as part of the research, although take of marine mammals does not occur at every site (marine mammals are not present at all sites). A few sites are visited monthly, while many sites are surveyed between 1 and 4 times annually. In 2018, a new site that had never been surveyed previously (Waddell) was added to the site inventory as part of a study examining ecosystem level effects of sea star wasting syndrome (SSWS). There are six additional biodiversity sites (*i.e.*, Ecola, Roads End, Otter Rock, Seal Rock, Graduation Point and North Head) that were not visited or analyzed as part of the initial IHA. This Renewal IHA is effective for a period of one year from the date of issuance.

Description of Marine Mammals

As noted in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8316; March 7, 2019), a description of the marine mammals in the areas of the activity for which incidental take is authorized may be found in the **Federal Register** Notice of the Proposed IHA (83 FR 3308; January 24, 2018) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

As noted in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8316; March 7, 2019), the description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized is found in the **Federal Register** Notice of the Proposed IHA (83 FR 3308; January 24, 2018) for the initial authorization. All of that information and analysis remain applicable and valid. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that no new information affects our initial analysis of potential impacts on marine mammals and their habitat.

Estimated Take

Detailed descriptions of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** Notices of the Proposed (83 FR

3308; January 24, 2018) and Final IHA (83 FR 11696; March 16, 2018) for the initial authorization, with updated information associated with new sites provided in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8316; March 7, 2019).

As part of the initial IHA, PISCO had estimated that Level B harassment of marine mammals was likely to occur at 16 sites (see 2018 application), conservatively based on the predicted number of visits to the sites and historical observational data (using maximum observations). These same 16 sites will be surveyed under the Renewal IHA. PISCO is requesting and NMFS is authorizing the same level of take for the 16 sites as was authorized under the initial IHA.

PISCO provided a preliminary marine mammal monitoring report covering March 12, 2018 through December 31, 2018 and recorded Level B harassment of 87 harbor seal takes and 1 California sea lion take. No northern elephant seal takes were reported. The total recorded take numbers are well below the take numbers authorized by NMFS in 2018 (255 harbor seal, 90 California sea lion, and 50 northern elephant seal). The preliminary monitoring report indicated that take by Level B harassment was recorded at eight sites in 2018 (of 64 sites visited and 5 of the 16 sites at which take was expected). At one site (Government Point), 20 more harbor seal takes occurred than predicted at that site, however, at other sites fewer marine mammal takes occurred than predicted. PISCO submitted a draft final monitoring report on March 27, 2019. Fifteen survey sites were visited between December 31, 2018 and the effective end date of the IHA on March 11, 2019. No takes were recorded during any of these 15 site visits. Variation in predicted marine mammal presence is expected across sites, and, further, as described in the 2018 application and IHA **Federal Register** notices, the number of predicted visits to a

particular site may also vary. However, the conservative take estimate methodology continues to ensure that the total authorized take and effect analysis remains appropriate.

There is one new site, Waddell, which was not addressed in the initial IHA, since PISCO had not secured funding for the SSWS study when the initial authorization was issued. PISCO did, however, monitor and record observations during 12 visits to Waddell between March 12, 2018 and March 11, 2019 after funding had been secured. PISCO recorded one harbor seal take. Seals are known to be rare at the Waddell site, and with only a single observation over a 12 month period at this location, PISCO believes, and NMFS agrees, that take is not likely at this site. Therefore, we are not increasing the total number of authorized takes for harbor seals. There are six biodiversity sites which will be visited in 2019 that were not visited or analyzed as part of the initial IHA. However, based on historical monitoring records the presence of marine mammals is unlikely and take is not authorized for any of these sites

Accordingly, all methodology and analysis in the **Federal Register** notices for the proposed and final initial IHA remain applicable and accurate, as explained in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8316; March 7, 2019). We therefore determine that the species and stocks affected, methods of take, and types of take remain unchanged from the initial IHA, as do the number of takes for each species, which are indicated below in Table 1.

Table 1. Authorized Take Numbers by Level B Harassment.

Species	Authorized Take
Harbor seal	255
California sea lion	90
Northern elephant seal	50

Description of Mitigation, Monitoring and Reporting Measures

As explained in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8316; March 7, 2019), a complete discussion of mitigation, monitoring, and reporting measures under the MMPA, as well as the specific mitigation, monitoring, and reporting measures appropriate for PISCO's activity at these particular sites, was provided in the **Federal Register** Notices of the Proposed IHA (83 FR 3308; January 24, 2018) and Final IHA (83 FR 11696; March 16, 2018) for the initial IHA. All of that discussion remains applicable and valid for this Renewal IHA. Additionally, the discussion of least practicable adverse impact included in those documents remains accurate. NMFS therefore determined that the mitigation, monitoring, and reporting measures included as requirements in the **Federal Register** Notice announcing the issuance of the initial IHA are appropriate and would be continued in this Renewal IHA. The following measures, which are identical to those in the initial IHA, are included in the Renewal IHA:

- Researchers shall observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required;
- Researchers shall approach a site with caution (slowly and quietly), keep bodies low to the ground and avoid pinnipeds along access ways to sites, by locating and taking a different access way if possible;
- Researchers shall keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (i.e. if a site cannot be accessed or sampled due to the presence of pinnipeds);
- Researchers shall monitor the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters;

- Intentional flushing shall be avoided if pups are present. Staff shall reschedule work at sites where pups are present, unless other means of accomplishing the work can be done without causing disturbance to mothers and dependent pups;
- Any site where Steller sea lions, northern fur seals, or Guadalupe fur seals are present shall not be approached and shall be sampled at a later date;
- Personnel shall vacate the study area as soon as sampling of the site is completed;
- Detailed monitoring information will include species counts, number of disturbances, description of disturbance behaviors, and information regarding physical and biological conditions at a given site;
- Submit a draft monitoring report to NMFS Office of Protected Resources within 60 days after the conclusion of the 2019-2020 field season or 60 days prior to the start of the next field season if a new IHA will be requested; and
- Reporting injured or dead marine mammals to appropriate authorities, including NMFS Office of Protected Resources and NMFS West Coast Regional Stranding Coordinator.

Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to PISCO was published in the **Federal Register** on March 7, 2019 (84 FR 8316). That notice both included information and referenced information from the initial IHA notices on PISCO's activity and the specific geographic region; the marine mammal species that had the potential to be affected by the activity; the potential effects on marine mammals and their habitat; the proposed amount and manner of take; the proposed mitigation, monitoring and reporting measures; and the preliminary determinations. NMFS received one comment letter, which was from the Marine Mammal Commission (Commission). The Commission provided comments as described below, concurred with NMFS's preliminary

determinations, and recommended issuance of the Renewal IHA to PISCO, subject to the inclusion of the mitigation, monitoring, and reporting measures.

Comment: The Commission questioned whether the public notice provisions for IHA Renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers to reviewing key documents and developing comments quickly. Therefore the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on IHA Renewals within the limitations of processing IHA applications efficiently. The **Federal Register** notice for the proposed initial IHA had previously identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the *Request for Public Comments* section and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we will publish notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, making a total of 45 days of public comment. We will also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA.

NMFS also strives to ensure the public has access to key information needed to submit comments on a proposed IHA, whether an initial IHA or a Renewal IHA. The

agency's website includes information for all projects under consideration, including the application, references, and other supporting documents. Each **Federal Register** notice also includes the name and contact information of the lead agency staff in the event a commenter has questions or cannot find the information they seek.

Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects, NMFS has explained on its website and in individual **Federal Register** notices that Renewal IHAs are appropriate where the continuing activities are identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. Where the commenter has likely already reviewed and commented on the proposed initial IHA for these activities, the abbreviated additional comment period should be sufficient for consideration of the results of the preliminary monitoring report and new information from the past year.

Comment: In order to increase efficiencies, the Commission recommended that NMFS authorize the incidental taking of marine mammals for future PISCO activities via an MMPA rulemaking rather than individual IHAs and IHA Renewals.

Response: We appreciate the interest that the Commission has shown in our efforts to streamline the MMPA authorization process. NMFS will discuss with the applicant the option of entering into a rulemaking for future incidental take authorizations.

Findings and Determinations

In the context of the activities that are likely to result in incidental take of marine mammals, the rocky intertidal monitoring surveys planned by PISCO for 2019 are nearly identical to those conducted under the initial IHA in 2018. The only changes are that a

new SSWS site, and six biodiversity sites described in the **Federal Register** Notice of the Proposed IHA Renewal, would be visited under the Renewal IHA, but no takes are anticipated or requested for these locations. Planned survey activities could result in Level B harassment consisting of temporary, short-term behavioral disturbance. In analyzing the effects of the activities in the initial IHA, and in consideration of the implementation of the required mitigation measures, NMFS determined that the total marine mammal incidental take from PISCO's rocky intertidal monitoring program would not adversely affect annual rates of recruitment or survival and, therefore, would have a negligible impact on the affected species or stocks. NMFS also concluded that the numbers of animals authorized for incidental take are small relative to the relevant species or stocks (0.65–0.82 percent for harbor seals, and <0.01 percent for California sea lions and northern elephant seals). As discussed above, the same amount and type of take is authorized under this Renewal IHA.

All of the information and analysis from the initial IHA remains applicable and valid for the findings and determinations under this Renewal IHA. In addition, there is no new information that substantively affects or suggests that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the authorized takes will not have an unmitigable adverse impact on

taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by these activities; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division whenever we authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (i.e., the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human

environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the Renewal IHA qualifies to be categorically excluded from further NEPA review.

IHA Renewal

NMFS has issued an IHA Renewal that includes the previously described mitigation, monitoring, and reporting requirements to PISCO for the harassment of small numbers of the three marine mammal species incidental to conducting rocky intertidal monitoring surveys off the coasts of Oregon and California for a period of one year.

Dated: April 22, 2019.

Donna S. Wieting,

Director,

Office of Protected Resources,

National Marine Fisheries Service.

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